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EXAMINER	
HAILU, KIBROM T	
ART UNIT	**PAPER NUMBER**
2616	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/815,512	OLIVER ET AL.	
	Examiner	Art Unit	
	Kibrom T. Hailu	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments received on October 25 have been fully considered but they are not persuasive because the cited references disclose the claimed invention as set forth in the previous Office Action. Therefore, finality of this Office Action is deemed proper in view of the following disclosure.

The arguments on page 8 to 11 of the Remarks are not persuasive. The claims are not patentable.

Regarding claims 1, 5, 11, 16 and 17, the applicants argue saying, "first computer operating a process, in cooperation with a third computer, for managing a second computer entity", "the first computer entity determining from a policy determined by a third computer entity, and from a local policy, a network management policy to be applied to a second computer entity by the second computer entity" and "the Pabla et al. patent, the vote is being cast by users of a computer, i.e., humans, and therefore, that the pabla et al. patent does not disclose applying a voting protocol in which the first and third computer entities vote".

Examiner respectfully submits in no way the specification discloses, "operating a process, in cooperation with a third computer entity of a peer to peer network, for managing second computer entity", let alone "in cooperation with a third computer entity". Yes, the specification discloses a computer entity provides resources to another computer in the network, and is able to use resources of the network (or another computer in the network) based on policy or policies. Also, the specification describes computer entities cooperate to vote for subordinating a particular computer entity in the network (e.g. see page 9, lines 9-10). The

Examiner doesn't find the newly amended limitations in the specification and submits that the specification doesn't disclose as specific as the amended limitations. Appropriate correction is required.

As explained above, the Applicants argue based on the newly added limitations, "...in cooperation with a third computer entity..." and "...policy determined by third computer entity, and local policy...". Pabla discloses that the computers or peer devices cooperate, communicate manage each other or use one another's resource via a peer-to-peer platform may do so by following a set of rules and conventions or policy (col. 12, lines 60-62; col. 13, lines 51-53; col. 18, lines 17-39, 43-50; col. 19, lines 32-39; col. 22, lines 17-21). Pabla further discloses a common policy is adapted by each of the peers or computer entities such that the peers appear as a single distribution system and the policy is to be followed by each of the peer group (col. 13, lines 6-12; col. 17, lines 23-34; col. 21, lines 13-16; col. 24, lines 15-23; col. 18, lines 55-59). That is, each of the peer group share policies and cooperate in managing each other. A third computer entity can be any peer that is cooperating with the first peer for sharing each others' resources (see figs. 1B, 4, 5 and 10). Likewise, the specification doesn't specify saying third computer entity. It generally explains a computer entity participates in a peer to peer network of a plurality of computer entities. Therefore, Applicants arguments are not persuasive.

Regarding, "the Pabla et al. patent, the vote is being cast by users of a computer, i.e., humans, and therefore, that the Pabla et al. patent does not disclose applying a voting protocol in which the first and third computer entities vote" Pabla doesn't explain that users cast the vote. The Applicants cited col. 18, line 28 and col. 24, line 22 read as "...policies may enforce a vote, or alternatively may elect one or more designated group representatives to accept or reject..."

and "...the policy (may be required of all members) to vote for new membership approval" do not indicate the users participate in the vote. Therefore, with all due respect, the cited cols. and lines do not indicate that the members are in fact users or humans. The Examiner believes that the members are the peers, which in this case are the computer devices (see fig. 1B, "peer devices").

Claim Objections

2. Claim 1 is objected to because of the following informalities:

The claim recite, "in aid" in line 7. It is assumed to mean, "in said". Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 16 IS rejected under 35 U.S.C. 101 because the claim is directed to non-statutory subject matter.

The claim is not statutory because the applicant claims, "a data storage media comprising: program data for controlling a first computer entity", which is not tangible. That is, the claim doesn't require any physical transformation and/or is not being executed by a computer. The program data or instructions that are stored in the media have to be executed such as by a processor. Therefore, the invention as claimed does not produce, useful, concrete, and tangible result [see MPEP 2106.01].

Double Patenting

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 1-4, 11-16, 19 and 18-22 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-4, 11-17 and 21-25 of copending Application No. 10/815511. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1, 5, 11, and 16-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 1, 11, 16 and 17, "operating a process, in cooperation with a third computer entity of said peer to peer network, for managing said second computer entity" and/or

"managing or participate in management of a second computer entity in said peer to peer network, in cooperation with a third computer entity in said peer to peer network" are not found in the specification. The pacification doesn't even mention a third computer entity. The specification explains the computers cooperate to vote. It doesn't as specific as the newly amended limitations.

Regarding claim 5, "from a third computer entity in said peer to peer network, a message describing policy determined by said computer entity for management of said second computer entity; and determining from said policy determined by said third computer entity" is not disclosed. Appropriate correction is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-3, 5-7, and 10-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Pabla et al. (US 7,127,613 B2).

Regarding claim 1, Pabla discloses a method performed by a first computer entity (see Figs. 1A and 1B): operating a peer to peer protocol for enabling said first computer entity to utilise a resource of a second computer entity of in a peer to peer network, and for enabling said second computer entity to utilise a resource of said first computer entity in said peer to peer network (col. 13, lines 17-23; col. 19, lines 32-39; col. 20, lines 33-43 etc..); and operating a

process, in cooperation with a third computer entity of said peer to peer network, for managing said second computer entity (col. 12, lines 60-62; col. 13, lines 51-53; col. 18, lines 17-39, 43-50; col. 19, lines 32-39; col. 22, lines 17-21; col. 1, lines 32-34), wherin said process is automatically invoked whenever said first computer entity takes part in said peer to peer network using said peer to peer protocol (Fig. 13; col. 18, lines 17-32 in combination with col. 20, lines 44-63 and lines 33-43, illustrates by means a vote, automatically, a peer represents to manage the other computers. Also each of the peers has its own content management services 222 to manage and facilitate content sharing using the peer group sharing protocol e.g. see co. 21, lines 13-16).

Regarding claim 2, Pabla discloses said process comprises: determining a policy by which said first computer entity will interact with said second computer entity (col. 13, lines 9-12, 51-66; col. 21, lines 56-57).

Regarding claim 3, Pabla discloses said process comprises: adopting a policy towards said second computer entity (col. 13, lines 55-57), wherein said policy is selected from a set of pre-determined polices for determining a relationship between said first computer entity and said computer entity (col. 17, lines 44-63; col. 18, lines 17-18; col. 19, lines 15-20; col. 20, lines 39-43; col. 23, lines 59-col. 24, line 2 ... etc.).

Regarding claim 5, Pabla discloses a method performed by a first computer entity in a peer to peer network, said method comprising (Fig. 1B); determining a local policy for management of a second computer entity in said peer to peer network (col. 19, lines 1-4; col. 19, lines 38-39; col. 18, lines 17-39; col. 21, lines 13-15); receiving from a third computer entity in said peer to peer network (Fig. 10; col. 17, lines 29-31), a message describing policy determined by said third computer entity for management of said second computer entity (col. 17, lines 23-

39; col. 18, lines 55-59); and determining from said policy determined by said third computer entity, and from said local policy, a network management policy to be applied by said first computer entity to said computer entity (Figs. 1B, 4, 5 and 10; col. 13, lines 6-12; col. 17, lines 23-34; col. 21, lines 13-16; col. 24, lines 15-23; col. 18, lines 55-59).

Regarding claim 6, Pabla discloses broadcasting said network management policy to a plurality of peer computers within said peer to peer network (col. 17, line 23-31, 41-44; col. 20, lines 33-35).

Regarding claim 7, Pabla discloses monitoring said second computer entity (Fig. 9; col. 13, lines 6-13); and depending upon a result of said monitoring, adopting a pre-determined policy from a stored set of policies, and applying said pre-determined policy to said second computer entity (col. 13, lines 51-57).

Regarding claim 10, Pabla discloses said determining network management policy comprises: applying a voting protocol in which said first and third computer entities vote, and thereby adapt a common policy for said network management policy (col. 18, lines 17-32).

Regarding claim 11, Pabla discloses a peer to peer networking component for allowing said first computer entity to engage other computer entities in a peer to peer network on a peer to peer basis (col. 12, lines 36-67; col. 20, lines 33-43; col. 25, lines 44-52; col. 15, lines 16-19); and a network management component for enabling said first computer entity to participate in management of a second computer entity in said peer to peer network (Fig. 13; col. 20, lines 58-63), in cooperation with a third computer entity in said peer to peer network, wherein said network management component is configured to operate automatically, whenever said peer to

peer networking component operates to allow said computer entity to take part in said peer to peer network (Fig. 13; col. 21, lines 13-16; col. 19, lines 32-39;).

Regarding claim 12, Pabla discloses said network management component is activated whenever said peer to peer networking component is operational (col. 17, lines 54-63; col. 18, lines 60-67; col. 23, lines 24-31).

Regarding claim 13, Pabla discloses said network management component comprises a program data that controls resources of said peer to peer network to perform a network management service (col. 14, lines 44-57; col. 12, lines 55-67; col. 15, lines 58-60; col. 22, lines 56-59; col. 17, lines 29-31 in combination with lines 39-44 and col. 19, lines 32-39).

Regarding claim 14, Pabla discloses said network management component applies policy for determining a mode of operation of said first computer entity in relation to said second computer entity (col. 13, lines 9-12; 51-66; col. 17, lines 29-31).

Regarding claim 15, Pabla discloses said network management component operates to: communicate with a plurality of other computer entities of said network for sending and receiving policy data concerning an operational policy towards said second computer entity (Figs. 1B and 10; col. 15, lines 50-57; col. 13, lines 51-57; col. 16, lines 61-62; col. 17, lines 29-34 in combination with col. 54-56) and determine, from a consideration of policy data received from said other computer entities, a global policy to be adopted by each computer entity in said network, towards said computer entity (col. 13, lines 55-57; col. 18, lines 26-39).

Regarding claim 16, the claim includes the features corresponding to subject matter mentioned above to the rejected claim 1, and is applicable hereto.

Regarding claim 17, Pabla discloses a method performed by a first computer entity (see Figs. 1B and 10), said method comprising: operating a peer to peer protocol for enabling said first computer entity to utilise a resource of said a second computer entity in a peer to peer network, and for enabling said second computer entity to utilize a resource of said first computer entity in said peer to peer network (col. 13, lines 17-23; col. 19, lines 32-39; col. 20, lines 33-43 etc..); and managing said second computer entity (Fig. 13; col. 20, lines 58-63; col. 21, lines 13-16), in cooperation with a third computer entity in said peer to peer network.

Regarding claims 18-22, Pabla discloses considering whether said second computer entity allows said first computer entity to utilise said resource of said second computer entity (see fig. 7; col. 10, lines 29-66, illustrates the first peer requests or desires to establish a peer to peer secured session to communicate and/or exchange data with the second peer).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over Pabla in view of Gleichauf (US 7,137,145 B2).

Regarding claim 9, Pabla discloses applying a monitoring operation to said second computer entity (col. 13, lines 6-12), wherein said monitoring operation is selected from the group consisting of: a monitoring operation for observing a group behavior of a group of second computer entities within said peer to peer network (col. 17, lines 29-37; col. 12, lines 55-67); a monitoring operation for detecting a security breach in said peer to peer network (col. 13, lines 9-14; col. 26, lines 24-28; col. 19, line 66-col. 20, line 10; col. 25, line 61-col. 26, line 3); a monitoring operation for detecting a performance problem of said second computer (col. 18, lines 43-50; col. 22, lines 17-31).

Pabla doesn't disclose a monitoring operation for remote virus scanning of said second computer.

Gleichauf teaches a monitoring operation for remote virus scanning of said second computer (col. 3, lines 39-42; col. 9, lines 25-28).

Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the method of detecting or monitoring and/or scanning virus of the remote computer 18 by one or more of the computers 16a, 16b and 16c as taught by Gleichauf into the peer-to-peer network of Pabla so that hackers, which could cause damage to the network, would be prevented from penetrating the network undetected.

13. Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over Pabla in view of Gleichauf, and further in view of Golle (Incentives for Sharing in Peer-to-Peer Networks, 2001, Computer Science Department, Stanford University).

Regarding claim 4, Pabla discloses managing said second computer entity (Fig. 13; col. 18, lines 17-32 in combination with col. 20, lines 44-63 and lines 33-43; co. 21, lines 13-16) comprises a process selected from the group consisting of: controlling access by said second computer entity to a communal resource stored on said first computer entity (col. 13, lines 9-14; col. 19, line 66-col. 20, line 2; col. 15, lines 42-44; col. 18, lines 55-59);

Pabla doesn't explicitly disclose placing said second computer entity in quarantine; or applying a charge for utilisation by said second computer entity of a communal resource.

Gleichauf teaches placing said second computer entity in quarantine (col. 3, line 63-col. 4, line 11; col. 2, lines 5-10). However, Gleichauf doesn't teach applying a charge for utilisation by said at least one other computer entity of a communal resource.

Golle teaches applying a charge for utilisation by said second computer entity of a communal resource (page 5, lines 36-38, page 1, lines 25-34).

Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to use the method of placing an infected computer in quarantine and charging a peer or user for using a resource as taught by Gleichauf and Golle, respectively into the peer-to-peer network of Pabla in order to prevent those hackers, which could cause damage, from penetrating a network undetected, and to increase the system's value to its users and so make it more competitive with other commercial P2P systems.

Regarding claim 8, Pabla discloses a said network management policy comprises a policy selected from the group (col. 21, line 57) consisting of: a policy for control of access by said target computer entity to a communal resource (col. 13, lines 9-14; col. 19, line 66-col. 20, line 2; col. 15, lines 42-44; col. 18, lines 55-59).

Pabla doesn't disclose a policy for determining whether or not to place said second computer entity into quarantine; a policy for generating a virus alert message for alerting other computer entities in the peer to peer network that a said second computer entity has a virus; a policy for generating a fault alert message for alerting other computer entities in the peer to peer network that said second computer entity is faulty; a policy determining whether to exclude said second computer entity from accessing a particular type of resource; a policy for determining whether to exclude said second computer entity from the peer to peer network; a charging policy for charging said second computer entity for accessing a resource.

Gleichauf teaches a policy for determining whether or not to place said second computer entity into quarantine (col. 3, line 63-col. 4, line 11; col. 12, lines 44-59; col. 2, lines 5-10, note that a compute can be defected or faulty due to virus infection); a policy for generating a virus alert message for alerting other computer entities in the peer to peer network that a said second computer entity has a virus; a policy for generating a fault alert message for alerting other computer entities in the peer to peer network that said second computer entity is faulty (col. 2, lines 14-24, 27-36; col. 6, lines 57-62; col. 13, lines 32-35); a policy determining whether to exclude said second computer entity from accessing a particular type of resource (col. 13, lines 26-35); a policy for determining whether to exclude said second computer entity from the peer to

peer network (col. 2, lines 25-28; col. 1, lines 49-51, 60-62; col. 1, line 64-col. 2, line 5; col. 3, lines 54-57; ... etc.).

Golle teaches a charging policy for charging said second computer entity for accessing a resource (page 5, lines 36-38, page 1, lines 25-34).

Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to use the method of policies for quarantining a computer, for generating a virus or fault, exclude the computer and charging a peer or user for using a resource as taught by Gleichauf and Golle into the peer-to-peer network of Pabla in order to prevent those hackers, which could cause damage, from penetrating a network undetected, and to increase the system's value to its users and so make it more competitive with other commercial P2P systems.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kibrom T. Hailu whose telephone number is (571)270-1209. The examiner can normally be reached on Monday-Thursday 8:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on (571)272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kth
01/04/2008

RICKY Q. NGO
SUPERVISORY PATENT EXAMINER